IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 723 of l995
in
Land Acq Ref No. 54 of l978

Madhukanta H Chanchani and ors. appellants
vs
The Special Land Acq Officer
7 and another ..respdts

Mr C.M.Korde with Mr R.C Shah i/b Bipin Joshi for appellants
Mr. Denzil Dmello AGP for respondent no.l
Mr. U J Makharia with Mr Vinod Deshpande for respondent no. 2

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l2.l.2005

Oral Judgement (Per A.P.Shah J.)

l. This appeal is directed against the order passed by the learned single Judge in a reference under section l8 of the Land Acquisition Act, l894. The appellants are the original claimants and their lands have been acquired by the Mumbai Municipal Corporation for the purpose of garden, recreation ground and 44 ft D.P.Road pursuant to the preliminary notification dated 23.9.l974 published on l0.l0.l974. The said notification pertains to C.S.Nos 364, 467, 468, 469, 470, 47l, 473 (part), 474 (part), 475 and 476 totally admeasuring 29,849.20 sq meters. Out of these lands the appellants are the owners of land admeasuring

l6,73l.95 sq meters, being CTS nos 470, 47l, 473 (part) and 474(part). As per the award of the SLAO the amount offered is Rs.60 per sq meter, whereas according to the Bombay Municipal Corporation the land in question can be awarded a sum of Rs.95 per sq mt. The appellants claimed that they ought to have been awarded compensation at the rate of Rs.300 per sq mt. Before the learned single Judge the appellants led evidence of Shirish Chanchani (appellant no.ll) and Shrinivas Deshpande, who has, on instructions of the appellants visited the property and submitted a valuation report. As per the valuation report the value of the acquired property is Rs.300 per sq mtr. On consideration of the evidence led by the parties the learned single Judge came to the conclusion that the claimants had failed to prove their case for enhancement of compensation and hence dismissed the reference.

2. Mr.Korde,learned counsel appearing for the appellants submitted that the property in question was the subject matter of the award passed by the SLAO dated 8.8.l977. By the same award the SLAO arrived at the market value of two other plots of lands bearing CTS Nos. 469(part), 467, 475 and 476. The said two plots are adjoining to the lands

of the appellants. The owners of the said two plots had also applied for the reference under section l8 of the Land Acquisition Act being LAR Nos. 44 of l978 and 46 of l978 which were decided on l4.l2.l995 and l4.l.l996 respectively. The learned single Judge has fixed the market value at Rs.l30 per sq mt in both the references and has held that the claimants in the said references are entitled to 30% solatium on the value of the land together with interest at the rate of 9% p.a. from l6.8.l977 and @ l5% p.a. from the date of possession till realisation. Mr. Korde urged that according to the valuation made by the SLAO as well as the valuation officer of the acquiring body the land of the appellants were superior to the land which are the subject matter of the LAR nos. 44 and 46 of l978 and were valued at Rs.60 and Rs.95 as against Rs.40 and 45 respectively. The learned counsel urged that the lands of the appellants are adjoining to the lands which are the subject matter of the above two references and, therefore, the claimants are entitled to the compensation at the same rate, if not more.

3. We find considerable substance in the submissions of the learned counsel. It is now well

settled that as the price fetched under a genuine sale deed could form the basis for determining the market value of the acquired land, the market value determined by an award made under the Act for an earlier acquired land, by either the Land Acquisition Officer or the Court could also form the basis for determining the market value of subsequently acquired land. In K Periasami v Sub-Tehsildar (Land Acquisition), (l994) 4 SCC l80, in a similar situation the Supreme Court has held that the claimants are entitled to compensation on the basis of the awards passed subsequently by different Benches of the High Court in first appeals and observed as under:

> "It is not disputed that the market value of lands acquired pursuant to the said notification has been determined by different Benches of the High Court such as Appeal Nos. 538 of l987 and l226 of l986 titled Special Tehsildar, Land Acquisition v Lakshmi Ammal.The lands for which the Land Acquisition Officer had awarded at the rate of Rs.70 per cent and the civil court on reference , had enhanced such rate to Rs.850 per cent, the High Court on appeal had

enhanced the rate in two cases to Rs.l000 per cent and in two cases to Rs.l050 per cent. Since the lands under consideration in the present appeals are situated in the same are and were acquired under the same acquisition and the Land Acquisition Officer himself had treated the lands to be in a better advantageous position than the lands covered in the other appeals, it would be clear that the lands in these appeals are possessed of better advantageous features than the lands covered by the judgment in other appeals by fixing their value at the rate of Rs.92 per cent. This fact was not noticed by the learned Judge, while disposing of the appeals, as it is observed that there is no evidence as to parity of the advantageous position of the lands to award the same compensation. The observation appears to be incorrect. The treatment of the lands by the Land Acquisition Officer himself by awarding to them a rate of Rs.92 per cent in these appeals while he had awarded the rate of Rs.70 per cent of lands in the other appeals furnishes the intrinsic evidence that the

> lands in question are situated in a better advantageous position than the lands concerned in the other appeals. When such is the situation the appellant also is entitled to parity of market value for the acquired lands".

4. In the present case the land under acquisition is from the same cluster of lands which was the subject matter of the same award. The Land Acquisition Officer in his award referred to the fact that the appellants' land has frontage on Mahatma Phule Road and, therefore, valued the land of the appellants at the rate of Rs.60 per sq mt as against Rs.40 and Rs 45 for the lands which are the subject matter of LAR Nos. 44 and 46 of l978. Ordinarily the appellants would be entitled to compensation at the same rate which was awarded by the learned single Judge in LAR Nos 44 and 46 of l978. However, it is seen from the record that the land of the appellants is much larger compared to the properties involved in the LAR Nos. 44 and 46 of l978 The area of the appellants' land is l6,63l sq mts as against the area of 7598 sq mts in LAR No. 44 of l978 and 5440 sq mters in LAR No.46 of l978. Having considered the submissions made by

the learned counsel for parties we feel that deduction of l5% would be appropriate and the price of Rs.ll0 per sq meter can be safely estimated as market price of the land under acquisition. The appellants thus would be entitled to enhanced compensation of Rs 50 over and above the compensation awarded by the SLAO alongwith all the statutory benefits.

5. In the light of the foregoing discussion appeal is partly allowed. The appellants are entitled to:

Sr No	particulars	Amount
A(i)	Value of land bearing CTS No 470,47l,473(pt),474(pt),l663l-95 sqmtres @ Rs.ll0 per sq mt	l8295l4.50
(ii)	For Wall (CTS No.474)	500.00
(iii)	For trees (CTS No.474)	50.00
(iv)	Total Market value	l830064.50
B	30% Solatium on (A) above as per section 23(2) of the LA Act	5490l9.35
C	Total Compensation payable(A+B)	2379083.85

D.	Total compensation awarded and paid tot he appellants under the SLA’s Award.	ll48237.00
E.	Addl compensation payable(C-D)	l230846.85
F.	Interest on (E) above u/s 28 of LA Act at 9% p.a from l6.8.77 to l5.8.78 i.e. one year	ll0776.22
G.	Interest on (E) above u/s 28 of the LA Act at l5% p.a from l6.8.78 to l2.l.05 (26 years & l49 days).	4875630.54
H.	Total amount payable to the appellants as on l2.l.2005.	62l7253.6l

Further interest is payable to the appellants on (E) above i.e. l2,30,846.85 from l3.l.2005 till date of payment at the rate of l5% per annum under section 28 of the Land Acquisition Act, l894.

The respondents are directed to pay the enhanced compensation as above within three months.